BAIL ORDER

The Appellant/Accused was directed to be released on Bail is and by the order of this Court dated 24.4.2001 made in CRL MP NO. 2412/01 on Crl Rc NO. 355/01

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 08-01-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

CRIMINAL APPEAL No. 355 of 2001

Murugesan ... Appellant/Accused

-vs-

State rep by
The Inspector of Police
Namakkal Police Station,
Crime No.1926 / 1998. ... Respondent/Complainant

Criminal Appeal filed under Section 374 Crl PC against the judgment and sentence, imposed on the appellant by the learned I Additional Sessions Judge - cum - Chief Judicial Magistrate, Salem, dated 14.03.2001, made in S.C.No.31 of 2000.

For appellant : Mr.S.Ashok Kumar, Senior Counsel
for Mr.A.Sasidharan

For respondent : Mr.Hasan Mohamed Jinnah
Govt. Advocate (crl. side)

J U D G M E N T

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This Criminal Appeal is directed against the judgment of conviction and sentence, dated 14.03.2001, made in S.C.No.31 of 2000 on the file of the I Additional Sessions Judge - cum - Chief Judicial Magistrate, Salem.

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2. The brief facts of the prosecution case are as follows :

On 13.10.1998, at about 1.30 p.m, when there was a wordy quarrel between the wife of the accused and the deceased, the deceased said to have attacked the wife of the accused by a "levelling reaper" found at the scene of occurrence and also pulled the saree of the wife of the accused. On seeing this, the accused attacked the deceased by another "leveling reaper", thereby caused injuries to the deceased. Originally on the complaint given by P.W.1, a case was registered under Section 324 IPC against the appellant / accused, subsequently, due to the death of the injured, the case was altered into one under Section 302 IPC.

3. In support of the prosecution case, P.Ws. 1 to 11 were examined. Exs.P.1 to P.14 were marked. On the side of the appellant / accused, D.Ws. 1 and 2 were examined. Ex.D.1 was marked and the "leveling reaper" used for causing injuries was marked as M.O.1.

4. Mr.Ashok Kumar, learned Senior Counsel appearing for the appellant would contend that the accused and the victim were belonged to the same community and they were relatives. Prior to the date of occurrence, the accused had made a platform with the help of a mason in front of his house. The deceased and his son, while returning from their agricultural field, on seeing the masonry work, started wordy quarrel with the wife of the accused, for which she replied. According to the learned Senior Counsel for the appellant, the deceased had dragged by pulling the saree of the wife of the accused and also attacked her by a "leveling reaper", found at the scene of occurrence. On seeing this, due to sudden provocation and for the purpose of private defence, the accused attacked the deceased. The deceased had also attacked him by another "leveling reaper" and caused injuries to the accused. Admittedly, both the wife of the accused and the deceased were subsequently admitted in the hospital after the occurrence. The wife of the accused, who was examined as D.W.1 was given treatment in the Government Hospital, Namakkal for about three days as inpatient and the doctor, who gave treatment to the wife of the appellant / accused was examined as P.W.6. But, the deceased, who had been given treatment in the same hospital for 6 days as inpatient breathed his last. According to the learned Senior Counsel appearing for the appellant, the act of the appellant / accused was only a private defence, since the deceased had attacked his wife and pulled her saree.

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5. Learned Senior Counsel also drew the attention of this Court to the findings of the court below, with regard to the same. The court below has held in its judgment at page 103 of the typed set, at para 24, that as per the prosecution case, the appellant / accused attacked P.Ws.1 and 2 and caused simple injury. At paragraph 22 of the judgment, the trial court has held that there is no previous enmity between the accused and the family members of P.Ws. 1 and 2. In order to establish the guilt of the accused, except the son of the deceased and his family members, no other independent witness was examined. On the other hand, on the side of the appellant / accused, the mason, D.W.2, an independent witness was examined. As per the evidence of D.W.2, the "leveling reaper" of the mason was used to attack the deceased, which was taken only from the scene of occurrence by the accused for causing injury, due to sudden provocation. Further, the trial court has found that prior to the occurrence that the deceased Kulanda Gounder had pulled the saree of D.W.1, the wife of the appellant / accused and that D.W.1 had also sustained injuries at the hands of the deceased, at the time of occurrence and the same is not in dispute.

6. According to the learned Senior counsel appearing for the appellant / accused, on account of private defence, while the deceased was attacking the wife of the appellant and also pulling her saree, the appellant took the leveling reaper found at the scene of occurrence, attacked and caused injuries to the deceased and that there was no intention for the appellant / accused, to cause the death of the deceased, as per the evidence available on record.

7. It is seen that the trial court has held that the evidence of P.W.1 and P.W.2 cannot be accepted, and at paragraph 24 of the judgment, reads as follows :

> "Since the accused had attacked the deceased and another, on account of private defence, it cannot be treated as offence."

8. Though the trial court has given the finding, based on the evidence that the appellant / accused had used force only as private defence, which cannot be construed as offence, contrary to the said finding, the court has held the appellant guilty of the charges framed against him.

9. The trial court has disbelieved the evidence of P.W.1 and P.W.2, by saying that their evidence cannot be accepted, at page number 24 of the impugned judgment. Further, the evidence of D.W.1 and D.W.2 would clearly show that the appellant / accused had attacked the deceased by leveling reaper, M.O.1, found at the

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scene of occurrence, since, his wife had been attacked by the deceased by a reaper and also pulled her saree. As per the finding of the court below, the attack made by the appellant / accused was only an act of private defence, which cannot be treated as offence and therefore, I am of the considered view that the conviction of the appellant / accused under Section 304 (II) IPC and the sentence imposed on him are contrary to the findings of the court below.

10. After hearing the arguments advanced by both the learned counsel with reference to the evidence available on record, I am of the considered view
that the appeal has to be allowed and the conviction and sentence imposed by the court below on the appellant has to be set aside.

11. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant / accused under Section 304 (II) IPC is set aside.

12. The fine amount, if any paid by the appellant / accused shall be refunded to him forthwith and the bail bond, if any executed by the appellant / accused shall be discharged.

tsvn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The I Additional Sessions Judge - cum - Chief Judicial Magistrate, Salem

2. The Principal District Judge, Salem

3. The The Inspector of Police
Namakkal Police Station,

4. The Public Prosecutor, High Court of Madras, Chennai.

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5. The Judicial Magistrate, Namakkal

+ one cc to Mr. A. Sasidharan, Advocate sr no. 1569

PPV(CO)
NM(21.06.07)

Crl.A.No.355 of 2001

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